

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 573 w/CS Negligence
SPONSOR(S): Kottkamp
TIED BILLS: **IDEN./SIM. BILLS:** SB 1654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	16 Y, 0 N w/CS	Birtman	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill addresses the expectation that holders of commercial real property upon which retail sales of goods or services takes place, and who own or control specified parking lots, will provide adequate security against reasonably foreseeable and preventable criminal acts that may occur on the premises. The bill sets forth a list of 8 security measures which any party may present as evidence on a motion for summary judgment or at trial. The bill is not intended to change the standard of care or elements of any cause of action.

It does not appear that this bill will have a fiscal impact.

The bill takes effect on July 1, 2005, and applies to causes of action that accrue on or after that date.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0573a.ju
DATE: April 1, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

PREMISES LIABILITY

Generally, premises liability is based on the negligence of the property owner or occupant in allowing invitees or licensees to enter the property, without warning, where that owner or occupant could foresee that such persons could be injured by a dangerous condition on the property that is not readily apparent.¹ Owners have a duty to provide reasonably safe premises and are only responsible for foreseeable risks. Ordinarily, a property owner has no duty to protect a person on his or her premises from a criminal attack by a third party; however, liability does exist where the likelihood of the misconduct and the unreasonable risk of it outweighs the burden of protecting against it.² In premises liability cases involving the intentional criminal acts of third parties, the duty of the property owner is defined by the foreseeability of the incident and the obligation of the property owner to maintain reasonably safe premises.

Numerous cases have discussed the element of foreseeability in connection with premises liability for criminal attacks by third persons. The recent trend has been to find that criminal attacks are foreseeable under most circumstances. To support such a determination, courts have allowed the finder of fact to consider the occurrence of other criminal incidents that took place on the property or within the community.³ An examination of the cases reveals no established pattern in the types of incidents that might support a finding of foreseeability. It is not clear what degree of factual similarity is required between other criminal activity and the incident giving rise to the action for damages.⁴

¹ See *Houssami v. Nofal*, 578 So.2d 495 (Fla. 5th DCA 1991).

² See *Drake v. Sun Bank and Trust Co. of St. Petersburg*, 377 So.2d 1013 (Fla. 2nd DCA 1979), appeal after remand, 400 So.2d 569 (Fla. 2nd DCA 1981).

³ See *Hardy v. Pier 99 Motor Inn*, 664 So.2d 1095 (Fla. 1st DCA 1995), wherein the court found that other incidents of criminal activity on or near the premises created a material issue of fact involving the foreseeability of the attack. The dissent cautioned, “In truth, a decision such as today’s imposes absolute liability upon [the hotel].... The courts have lowered the bar to such an extent in this type of case that a commercial premises owner is a virtual insurer of the safety of its business invitees.” *Id.* at 1099 (Kahn, J., dissenting).

⁴ See *Larochelle v. Water & Way Ltd.*, 589 So.2d 976 (Fla. 4th DCA 1991), wherein the court held that a landlord could be held liable for a sexual battery committed against a tenant, because the landlord was on notice of danger to tenants by virtue of other crimes committed within a four to twelve block radius, and as a result of unsavory (though unviolent) conduct that occurred in another apartment unit; *Odice v. Pearson*, 549 So.2d 705 (Fla. 4th DCA 1989), wherein the Fourth District Court of Appeal held that the trial court committed reversible error in limiting the issue of foreseeability to crimes that occurred on appellee’s property and adjacent sidewalk; *Paterson v. Deeb*, 472 So.2d 1210 (Fla. 1st DCA 1985), wherein the court held that police records of reported crime in the geographical neighborhood, not limited to the actual premises or even to the block of the attack, are competent evidence of foreseeability of a criminal attack.

In other cases, Florida courts have discussed the adequacy of various security arrangements. These cases, taken as a whole, provide little guidance concerning what types of security measures would be sufficient to avoid liability. Generally, the courts have found the following factors to be relevant in determining whether a property owner has exercised ordinary care in providing adequate security:

- Industry standards;
- Community's crime rate;
- Extent of criminal activity in area or in similar business enterprise;
- Presence of suspicious persons; and
- Peculiar security problems posed by the building's design.⁵

The duty to provide a reasonably safe premise has been found to be non-delegable, and thus a property owner is vicariously liable for any negligence of the firm it hires to provide security services.⁶

Several other types of negligence cases are provided with a statutory 'safe harbor', wherein there is provided a presumption against negligence for the intentional criminal acts of third parties if the actor substantially complies with the required measures. For example, the owner or operator of a convenience store that substantially implements statutory security measures gains a presumption against liability in connection with criminal acts that occur on the premises and that are committed by third parties who are not owners or operators.⁷ Similarly, in a civil action for death or injury to a third person caused by the intentional tort of an employee, an employer is considered not to have negligently hired the employee if the employer complies with statutory background investigation requirements.⁸

This bill creates s. 812.18, F.S., which establishes an expectation that persons or organizations owning or controlling an interest in commercial real property upon which retail sales of goods or services, and who owns or controls a parking lot of 150 or more parking spaces associated with such retail sales, shall provide adequate security against reasonably foreseeable and preventable criminal acts that may occur in the parking lot, adjacent public walkways, common areas, and public building entrances and exits on the premises. The bill sets forth a list of eight security measures, compliance or non-compliance with which may be presented by any party as evidence on a motion for summary judgment or at trial. The eight conditions are as follows:

- a) Signs are prominently posted indicating the hours of normal business operations and advising that the premises are monitored by video cameras. Suggests that signs may provide a specified safety message.
- b) Substantially all of the parking lot, adjacent public walkways, common areas, and public building entrances and exits are illuminated at a specified intensity as attested by a certified electrical engineer or licensed electrical contractor, unless another level of illumination is required by local, state, or federal law.
- c) Specified crime awareness and prevention policies and training programs are adopted and maintained.
- d) Security cameras were installed and were operating during business hours and for at least 30 minutes before the opening and after the close of business. The cameras must cover substantially all of the parking lot, and adjacent public walkways, common areas, and public building entrances and exits on the premises. The recordings must be maintained for at least 30 days.
- e) Security cameras were installed, maintained, and were monitoring the location on the premises where the criminal act occurred.
- f) A licensed security guard or police officer was on duty. The number of security guards or officers should be based on a specified assessment.
- g) Fencing is installed and maintained.

⁵ See *Orlando Executive Park, Inc. v. P.D.R.*, 402 So.2d 442 (Fla. 5th DCA 1981).

⁶ See *U.S. Security Services Corp. v. Ramada Inn, Inc.* 665 So.2d 268 (Fla. 3rd DCA 1995), rev. denied 675 So.2d 121 (Fla. 1996).

⁷ See s. 768.0705, F.S.

⁸ See s. 768.096, F.S.

- h) A written assessment of the appropriate security measures has been made, based upon criminal incident reports from local law enforcement agencies, an on-site examination, and the present status of security measures.

The bill also provides that evidence relating to compliance or non-compliance with the 8 listed security measures shall be admissible in evidence in any civil or criminal proceeding, if such evidence is otherwise admissible pursuant to the Florida Evidence Code. The bill provides that it is not intended to change the standard of care or the elements of any cause of action. The provisions of the bill do not apply if the criminal act was committed by the owner or controller of the interest in the commercial property, or an employee or agent of such person.

C. SECTION DIRECTORY:

Section 1 creates s. 812.18, F.S., to provide an expectation that specified business owners will provide adequate security against reasonably foreseeable criminal acts that may occur on their premises; provides compliance or non-compliance with the stated list of 8 security measures can be presented as evidence at a motion for summary judgment; provides for admissibility in other civil or criminal proceedings; provides for applicability.

Section 2 provides an effective date of July 1, 2005, and applies to causes of action that accrue on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:

None.

- 2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:

None.

- 2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may serve as an incentive for business owners to make improvements to their security practices as a way to defend themselves from potential liability.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2004, the Judiciary Committee adopted a strike-all amendment that removed portions of the bill that provided a legal presumption, specified immunity, and comparative fault provisions relative to intentional torts. The amendment provides that specified business owners are expected to provide adequate security to protect against reasonably foreseeable and preventable criminal acts that may occur on specified areas of the premises; provides that the compliance or non-compliance with 8 stated security provisions may be presented as evidence by any party on a motion for summary judgment or at trial; provides that such compliance or non-compliance shall be admissible in evidence in any civil or criminal proceeding if otherwise admissible; provides that the provisions of the bill are not intended to change the standard of care or elements of any action; provides an exclusion if the criminal act was committed by the owner, or employee or agent of the owner of the property; and provides for an effective date of July 1, 2005 with applicability to causes of action that accrue on or after that date.